No. 03-1701

Supreme Court, U.S.
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In The
# Supreme Court of the United States

RODNEY LEROY CRAIG,

*Petitioner,*

v.

TAMIKA HOLSEY,

*Respondent.*

**On Petition For Writ Of *Certiorari* To The Georgia Court Of Appeals**

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF *CERTIORARI*

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## INTRODUCTION

This is a drunk driving, auto accident case. Petitioner Rodney Leroy Craig (hereinafter "defendant Craig") was intoxicated, high on drugs and on probation for possession of crack cocaine at the time he crashed his car into plaintiff Tamika Holsey in the summer of 1998. He fled the scene after the crash without any regard for plaintiff but was subsequently arrested and pled guilty to various criminal charges. On the stand at the trial of this case, defendant Craig admitted that his conduct was "reckless" and during closing argument Craig's attorney admitted to the jury that his client's conduct was "reprehensible and inexcusable." (T. 92-93, 341). The jury rendered a verdict in favor of plaintiff which included a $200,000.00 punitive damage award.

Defendant appealed the punitive damage award asserting it violated his due process rights under the Fourteenth Amendment. The Georgia Court of Appeals analyzed the issue under *BMW of North America v. Gore*, 517 U.S. 559 (1996) and *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408 (2003), and upheld the award by a vote of 6 to 1. *See Craig v. Holsey*, 590 S.E.2d 74 (Ga. App. 2003) (attached to Petition). After defendant's discretionary appeal to the Georgia Supreme Court was denied he filed a Petition for *Certiorari* with this Court.

No compelling reason exists for granting a writ of *certiorari* in this case.

## STANDARDS

"Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." U.S. Sup. Ct. R. 10 (2003). Compelling reasons include cases where (1) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort; (2) a state court has decided an important question of federal law that has not been, but should be, settled by this Court; or (3) a state court has decided an important federal question in a way that conflicts with relevant decisions of this Court. *Id.*

While this Court must conduct a *de novo* review of the amount of a punitive damage award pursuant to the factors articulated in *Gore*, "it of course remains true that [appellate courts] should defer to the [trial court's] findings of fact unless they are clearly erroneous." *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 523 U.S. 424, 440 n.15 (2001).

## STATEMENT OF THE UNDERLYING CASE

On August 9, 1998, defendant Rodney Leroy Craig smoked two marijuana cigarettes, drank six beers and eight ounces of gin, and then crashed his car into Tamika Holsey. (Craig Depo. at 53-54; T. at 69, 72-74, 175). After the car in which Tamika was a passenger spun across the highway into an oncoming lane of traffic, Craig fled the scene. (T. at 84-85, 177). He never stopped to determine whether anyone had been injured or killed, and was only captured by law enforcement because his car died as a result of the violent collision. (T. 86-88). After his arrest,

Craig's blood-alcohol level was 0.169. (Craig Depo. at 98; T. at 368). Tamika, a young college basketball player, sustained serious injuries as a result of the accident. (T. at 180-81).

Plaintiff filed suit against Craig seeking compensatory and punitive damages under Georgia law, trials involving punitive damage claims are bifurcated. Ga. Code Ann. § 51-12-5.1(d); *Webster v. Boyett*, 496 S.E.2d 459 (Ga. 1998). During the first phase of trial, the jury determines whether punitive damages should be awarded and during the second phase the jury determines the amount of punitive damages necessary to punish and deter the defendant from future misconduct. *Id.*

During the first phase of trial, the evidence showed that Craig's misconduct was willful, intentional, reckless and that he acted with a total disregard for the consequences of his actions or the health and safety of others. Based upon his prior experiences, defendant Craig admitted he was aware at the time of the subject incident of the "speedball" effect of combining alcohol and drugs, and the influence it had on his ability to drive. (T. 333-37). Craig was a habitual substance user who often drove his vehicle after consuming both alcohol and drugs, and thus had an appreciation of the risks and dangers of engaging in such conduct. (T. 334). Despite this, Craig knowingly operated his vehicle on the night in question while drunk and on drugs. Craig testified that the reason he engaged in such misconduct was that the "mood" just hit him. (T. 334-35).

This testimony was admitted during the first phase of trial as evidence that Craig engaged in willful misconduct, recklessly disregarded a known risk and was consciously indifferent to the consequences of his actions. *See* Ga. Code

Ann. § 51-12-5.1(b). This evidence was also admissible because defendant's attorney opened the door during opening argument as follows:

> I guess, as far as, you know, whether or not to punish him, or to award money damages award against him to keep him from doing this in the future, I think it's important to note that this thing happened back in 1998, you know, Mr. Craig's not had any further DUI's, *or any incidents like this*, and so, the deterrence factor, certainly, I would hope that the punishment handed down by, you know, the state of Georgia, that apparently the plea helped *to deter him from future acts such as this*, and I think that should be considered by you, in determining whether or not he needs to be punished or deterred further.

(T. at 58) (emphasis added).

While defendant's counsel argued that Mr. Craig had been adequately deterred by the imposition of criminal sanctions by the state of Georgia, the evidence was quite to the contrary. Craig continued to engage in similar misconduct and admitted violating the terms of the punishment imposed after the incident in which Ms. Holsey was injured. (T. 90-92). As the Georgia Court of Appeals held, defense counsel's opening argument "opened the door for evidence that Craig had not been deterred by his criminal conviction from smoking marijuana and driving after doing so." *Craig v. Holsey*, at 8a.

Evidence was also introduced during the first phase that Craig had pled guilty to possession of crack cocaine and was on probation which forbade him from drinking alcohol or consuming drugs at the time of the collision. (T. at 75, 90, 361-62). Under Georgia law, evidence of felony convictions

and guilty pleas are admissible for purposes of impeaching a witness, which was done in this case. As the Court of Appeals noted below, Craig did "not contend that the conviction itself was inadmissible" on appeal. *Craig v. Holsey*, at 6a.

Craig exhibited a total disregard for the law and for the safety of others, including Tamika Holsey. His conduct went beyond the bounds of all acceptable behavior in a civilized society and threatened the health and lives of those in his path. Based upon the evidence, the jury returned a verdict for plaintiff awarding $8,801.40 in compensatory damages and determined that punitive damages should be awarded against Craig.

During the second phase of trial, the jury received evidence of the need to punish and deter Craig from engaging in similar intentional and potentially lethal misconduct in the future. Evidence was submitted during this phase of Craig's pattern of reckless, illegal and dangerous alcohol and drug-related behavior. The jury awarded $200,000.00 in punitive damages. (R. at 219).

## DEFENDANT'S APPEALS

Defendant Craig appealed the jury's verdict to the Georgia Court of Appeals. Craig argued that certain evidence should not have been admitted at trial and that the punitive damage award unconstitutionally deprived him of due process under the Fourteenth Amendment. The court affirmed in all respects.

Regarding the evidentiary issues, the court held that all of the testimony and evidence was admissible for

purposes of establishing plaintiff's entitlement to punitive damages and as to the amount of punitive damages. The court further held, as noted above, that defendant's counsel opened the door with respect to the admission of certain testimony.

As to defendant's due process claim, the court went through the analysis set forth in this Court's decisions in *Gore* and *Campbell* and held that "the award of punitive damages in this case was not grossly excessive so as to be unconstitutional under the Due Process Clause of the Fourteenth Amendment of the United States Constitution." *Craig v. Holsey*, 8a-11a. Defendant's primary argument was that the punitive damage award was *per se* unconstitutional because of its ratio to the compensatory damage award, a position explicitly rejected by this Court. *Campbell*, 538 U.S. at 425.

For the reasons set forth below, the Georgia Court of Appeals' analysis was proper under *Gore* and *Campbell*.

## EVIDENTIARY ISSUES

Much of defendant's Petition is based upon purported erroneous evidentiary rulings by the trial court. To the extent defendant Craig seeks to have this Court review these evidentiary rulings, respondent suggests that such a review is unnecessary and would be inappropriate. The discretionary evidentiary rulings of the trial court were proper and correct.

> "Admission of evidence is within the sound discretion of the trial court and appellate courts will not interfere absent abuse of that discretion. Evidence having a tendency to establish facts in

> issue is relevant and admissible, and no matter how slight the probative value, our law favors admission of relevant evidence. [Cit.]" *Martin v. Williams*, 451 S.E.2d 822, 824 (Ga. App. 1994).
>
> "It is a general rule that in a suit for negligence, evidence of the defendant's similar acts or omissions on other and different occasions is not admissible. Generally, proof of the defendant's prior driving record, or of his general character for carelessness or recklessness is impermissible. However, an exception to the general rule applies where the defendant's driving under the influence in the incident at issue is an aggravating circumstance which would authorize the trier of fact to impose punitive damages. . . . Under those circumstances . . . the extent of the defendant's willful misconduct, wantonness and entire want of care in driving under the influence cannot be gauged solely by focusing on the incident in issue. [Cit.] Accordingly, in such cases, evidence that the defendant pled guilty to driving under the influence prior to or even after the incident in issue would be admissible as relevant to the issue of punitive damages." *Holt v. Grinnell*, 441 S.E.2d 874, 875 (Ga. App. 1994). *See also Langlois v. Walford*, 539 S.E.2d 565 (Ga. App. 2000).

Evidence regarding Craig's prior experiences with combining alcohol and drugs, and with driving, were admissible for purposes of establishing Craig's awareness of the "speedball" effect of combining the two and aware of the influence it had on his ability to drive. (T. 333-37). The evidence related directly to the degree of recklessness, willfulness and reprehensibility of his conduct on the night plaintiff was injured.

Evidence regarding Craig's subsequent drug use was introduced as evidence that the criminal sanctions imposed against him had no deterrent effect on his behavior. As stated above, the Georgia Court of Appeals held that defendant's counsel opened the door on this issue. "[O]ne cannot complain of a ruling when one's own conduct aided in causing the ruling." *Craig v. Holsey*, at 8a (citing *Thomas v. State*, 545 S.E.2d 354 (Ga. App. 2001)).

Defendant Craig was not punished for "dissimilar acts" but was punished for his misconduct in this case. The amount of the punitive award was based upon that misconduct and upon the ineffective deterrent effect of the criminal sanctions already imposed by the state of Georgia.

## THE *GORE* GUIDEPOSTS

The facts of this case are extraordinary because defendant's misconduct was unique and the need for punitive damages compelling. The jury's punitive damage award was supported by the evidence and was constitutionally permissible.

Constitutional review of punitive damage awards must be based on the facts and circumstances of each case. Under *Gore*, appellate courts must consider three case-specific guideposts: (1) whether the award was commensurate with the egregious and reprehensible conduct of the defendant; (2) the relationship between the actual or potential harm caused by defendant's misconduct and the punitive damage award; and (3) the relationship between the punitive damage award and the criminal and civil

penalties authorized or imposed in comparable cases. *Gore*, 517 U.S. 559.

The lower court correctly held that these guideposts support the jury's punitive damage award in this case.

## DEFENDANT'S EGREGIOUS & REPREHENSIBLE CONDUCT

"Perhaps *the most important* indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct," as it "should reflect the enormity of his offense." *Gore*, 517 U.S. at 575 (emphasis added). "This principle reflects the accepted view that some wrongs are more blameworthy than others." *Id.* "The flagrancy of the misconduct is thought to be the *primary consideration* in determining the amount of punitive damages." *Id.* at 575 n.23 (emphasis added).

There can be no question that the reprehensibility of defendant's conduct in this case justified, and was indeed the impetus behind, the jury's punitive damage award Defendant used drugs and drank an enormous amount of alcohol before the crash; he was already on probation for a crack cocaine charge that forbade him from consuming alcohol or drugs; he fled the scene of the accident; he did so because the mood hit him; he had driven under the influence of both drugs and alcohol prior to this accident; he knew of the "speedball" effect of combining the two but continued to engage in such misconduct; he continued to use drugs after being criminally sanctioned for his conduct in this case; he admitted he acted recklessly and his counsel admitted that his conduct was "reprehensible."

This conclusion is further supported by statutes enacted by the Georgia legislature. While punitive damages in Georgia are capped in tort actions at $250,000.00

unless a specific intent to cause harm can be demonstrated, the legislature removed that cap where "the defendant acted or failed to act while under the influence of alcohol [or] drugs. . . ." Ga. Code Ann. § 51-12-5.1. "[T]he General Assembly has placed various limitations on awards of punitive damages and the recipient in recognition of the many degrees of culpability." *Kent v. White*, 599 S.E.2d 731, 738 (Ga. App. 2002).

A "reviewing court engaged in determining whether an award of punitive damages is excessive should accord substantial deference to legislative judgments concerning appropriate sanctions for the conduct at issue." *Gore*, 517 U.S. at 583. While punitive damage awards are still bound by the constraints of the Fourteenth Amendment, O.C.G.A. § 51-12-5.1 reflects the "legislative judgments" requiring "substantial deference" under *Gore*.

Despite the admissions of defendant and his counsel at trial regarding the reprehensibility of his misconduct, defendant now takes the incredible position that the reprehensibility prong of the *Gore* analysis does not support the punitive damage award in this case.

In *Campbell*, the Supreme Court noted that factors to be considered in determining the reprehensibility of a defendant's misconduct include:

(1) whether the harm caused was physical as opposed to economic;

(2) whether the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others;

(3) whether the target of the conduct had financial vulnerability;

(4) whether the conduct involved repeated actions or was an isolated incident; and

(5) whether the harm was the result of intentional malice, trickery, or deceit, or mere accident.

*Campbell*, 538 U.S. at 419.

In his Petition, defendant Craig insists that subfactors 3, 4 and 5 were not met, and therefore the award must be reversed. This argument is wrong. The third subfactor mentioned in *Campbell* – financial vulnerability – has no conceivable application in personal injury cases. That issue is relevant only in commercial torts, such as those in *Gore* and *Campbell*. The fourth subfactor was indisputably supported by the evidence in this case because Craig was a repeat, habitual offender and had engaged in a long history of misconduct. The Court of Appeals in this case correctly held that Craig had "driven repeatedly after drinking or smoking marijuana." The fifth subfactor is also satisfied because defendant's flagrant conduct rose to the level of intentional misconduct and/or malice. Craig admitted during his testimony that he had combined drugs and alcohol before and operated a vehicle; that he was aware of the effect this drug-alcohol combination had on his ability to drive; and that he continued to engage in such misconduct in the face of such knowledge.

Defendant Craig's argument that the Court of Appeals' decision somehow opened the flood gates for unlimited punitive damage awards in every case ignores the very unique and very important facts of this case. The reprehensibility of defendant's misconduct cannot be contested.

## RELATIONSHIP BETWEEN ACTUAL & POTENTIAL HARM AND THE PUNITIVE DAMAGE AWARD

In the court below, defendant asserted that any punitive damage award exceeding nine times the compensatory award was *per se* unconstitutional under *Campbell*. Defendant Craig would transform the appellate courts into constitutional mathematicians in reviewing punitive damage awards, requiring automatic reversal or remittitur if they exceed a particular ratio.

Defendant relies upon a sentence from the Court's opinion that "in practice, few awards exceeding single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process," *Campbell*, 538 U.S. at 425, then argues that because the award in this case exceeds that ratio the Georgia Court of Appeals' decision violates *Gore* and *Campbell*.

This Court has explicitly rejected such a mindless calculation, demanding instead judicial assessment, thought and reasoning in reviewing such issues. Defendant's position is over-simplistic, inappropriate and contrary to the explicit language of the *Gore* and *Campbell* decisions. This Court has "consistently *rejected* the notion that the constitutional line is marked by a simple mathematical formula, even one that compares actual and potential damages to the punitive award." *Id.* (emphasis added). In fact, this Court explicitly rejected the argument urged by defendant in this case by holding: "We decline again to impose a bright-line ratio which a punitive damages award cannot exceed." *Id.*

With respect to single-digit ratios, the Court emphasized that the reference was merely "instructive" and in no

way "binding" in all cases. *Id.* Significantly, the Court held:

> Nonetheless, because there are no rigid benchmarks that a punitive damages award may not surpass, ratios greater than those we have previously upheld *may comport with due process where a particularly egregious act has resulted in only a small amount of economic damages.*

*Id.* (emphasis added).

This case falls into the very category identified by the Court that would justify an award in excess of the single-digit ratio: the defendant engaged in a "particularly egregious act" that resulted in a comparatively small amount of economic damages. The jury determined that substantial punitive damages were warranted and required to punish and deter the defendant from future misconduct. That is exactly what the jury was charged, as punitive damages under Georgia law are to be "awarded not as compensation to a plaintiff but solely to punish, penalize, or deter a defendant." Ga. Code Ann. § 51-12-5.1(c).

The Supreme Court's decision in *Campbell* does not reduce the careful, constitutional analysis required for review of punitive damage awards to a mathematical equation; legal reasoning has not been replaced by calculators. The lesson from *Campbell* is clear, but it has been missed by the defendant: each case must be assessed on its own facts and circumstances.[1]

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[1] The particular facts of *Campbell* are distinguishable from the facts of this case. First, the compensatory award in *Campbell* was substantial ($1,000,000). Second, *Campbell*, like *Gore*, involved

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The second *Gore* guidepost requires review not only of the relationship between the actual harm caused by the defendant, but the "potential harm" as well. *Gore*, 517 U.S. at 580; *Campbell*, 538 U.S. at 424. The potential harm caused by defendant's reckless and illegal misconduct in this case was certainly great – his alcohol and drug binge could have killed or maimed anyone unlucky enough to find themselves in his path. A car in the hands of an individual who is drunk and high on drugs is as dangerous as firing a loaded gun into a crowd. The potential harm was great and, contrary to defendant's position, such harm must be considered under the Supreme Court's decisions in *Gore* and *Campbell*.

The facts of this case justify the disparity between the actual or potential harm caused by defendant's misconduct and the punitive award.

## RELATIONSHIP BETWEEN THE PUNITIVE DAMAGE AWARD AND COMPARABLE CIVIL AND CRIMINAL PENALTIES

The third *Gore* guidepost requires a comparison of "the punitive damages award and the civil or criminal penalties that could be imposed for comparable misconduct . . . " *Gore*, 517 U.S. at 583 (emphasis added). A "reviewing court engaged in determining whether an award of punitive damages is excessive should accord substantial deference to legislative judgments concerning

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commercial transactions, and not personal injuries. Lives were not at risk because of defendant's misconduct, only dollars. Third, the *Campbell* ratio was 145:1, which would translate in this case to a punitive damage award of $1,276,203. In *Gore*, the ratio was 500:1, an equivalent of a $4,400,700 punitive award in this case.

appropriate sanctions for the conduct at issue." *Id.* This prong also supports the jury's punitive damage award.

The civil penalties that can be imposed for defendant Craig's conduct in this case are set forth at Ga. Code Ann. § 51-12-5.1(f). As discussed above, the Georgia legislature has removed the $250,000.00 cap on punitive damages in cases where the defendant acted or failed to act while under the influence of alcohol or drugs. *Id.* In its opinion, the Georgia Court of Appeals noted that the *Gore* guideposts are "based on the principle that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose." *Craig v. Holsey*, at 11a. The legislature's removal of the $250,000.00 punitive damage cap for DUI cases weighs heavily in favor of supporting the jury's award in this case. Defendant does not discuss the significance of this statute in his Petition.

The third *Gore* guidepost is further satisfied when the criminal penalties for defendant Craig's misconduct are considered.[2] Defendant's conduct in this case was obviously

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[2] In *Campbell*, the Supreme Court held that "[t]he existence of a criminal penalty does have bearing on the seriousness with which a State views the wrongful action. When used to determine the dollar amount of the award, however, the criminal penalty has less utility. Great care must be taken to avoid use of the civil process to assess criminal penalties that can be imposed only after the heightened protections of a criminal trial have been observed, including, of course, its higher standards of proof. Punitive damages are not a substitute for the criminal process, and *the remote possibility* of a criminal sanction does not *automatically* sustain a punitive damages award." *Campbell*, 538 U.S. at 428 (emphasis added).

These concerns have little or no application to this case, however, because Craig pled guilty to his crimes – his criminal guilt was not a "remote possibility" but a fact established at trial. The *Campbell*

(Continued on following page)

criminal, as is evidenced by the charges brought against him to which he pled guilty. While the maximum fine for leaving the scene of an accident and driving under the influence is $1,000.00 per offense, there are other sanctions authorized under Georgia's criminal statutes. Craig was subject to imprisonment for up to twelve months for causing a non-serious injury and from one to five years in prison for causing serious injury of another. Ga. Code Ann. § 4-6-270. Under Ga. Code Ann. § 40-6-391(c), Craig was subject to imprisonment for "not less than ten days nor more than 12 months." Defendant's conduct on the night of August 9, 1998, constituted violations of his probation which would also have been grounds for imprisoning him.

The fact that imprisonment is authorized in the criminal context for a defendant's misconduct is significant. *Gore,* 517 U.S. at 583. The fact that the legislature authorized up to five years imprisonment or more for defendant's conduct in this case strongly supports the jury's punitive damage award.

## THE COURT OF APPEALS' RELIANCE ON *JONES*

In his Petition, defendant Craig misstates the rationale and analysis employed by the Georgia Court of Appeals by insisting that the court misapplied the law and ignored the second *Gore* guidepost. Defendant makes the following assertion:

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decision underscores that the existence of criminal sanctions is relevant to the third *Gore* guidepost, but that it does not "automatically" sustain a punitive award.

> The only authority that the court below cited in support of its comparison of hypothetical compensatory damages to punitive damages is *Hospital Auth. Of Gwinnett County v. Jones*, 409 S.E.2d 501 (Ga. 1991). In *Jones*, the Georgia Supreme Court "rejected the notion that punitive damages must bear some relationship to the *actual* damages awarded by the jury."

Petition at p. 10-11.

Defendant's statement is inaccurate and misleading. This Court's decisions require consideration of the "potential harm" of a defendant's misconduct under the second *Gore* guidepost. *See Gore*, 517 U.S. at 575 (second guidepost of constitutional analysis of punitive damage awards under the due process clause is "the disparity between the harm or potential harm suffered by Dr. Gore and his punitive damages award."); *Campbell*, 538 U.S. at 424 ("Turning to the second *Gore* guidepost, we have been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award . . . We have consistently rejected the notion that the constitutional line is marked by a simple mathematical formula, even one that compares actual *and potential* damages to the punitive award.") (internal citations and quotations omitted).

The Court of Appeals passing reference to the *Jones* decision on page 10a of its opinion was merely illustrative of this principle that the actual *and* potential harm should be considered. Contrary to defendant's representation to this Court, *Jones* was not relied upon as "[t]he only authority" for considering potential harm – *BMW v. Gore* was the cited authority. The portion of the *Jones* decision quoted by defendant above which purportedly rejected any

comparison between compensatory and punitive damages was *never* mentioned, considered nor relied upon by the Georgia Court of Appeals in this case.

Defendant's insinuation that the lower court rejected and did not apply the second *Gore* guidepost is simply wrong.

## THE PURPORTED CONFLICT BETWEEN THE UTAH & GEORGIA SUPREME COURT DECISIONS

Defendant's attempt to create a conflict between the Georgia Court of Appeals' decision in this case and the Utah Supreme Court's decision in *Campbell v. State Farm Mut. Auto. Ins. Co.*, No. 981564, 2004 WL 869188 (Utah Apr. 23, 2004), is frivolous.

Defendant argues that the reasoning and holding of the Utah Supreme Court's recent decision, which merely cites language from *Campbell*, "demonstrates that it will likely invalidate *any* punitive award exceeding a 9-to-1 ratio." Petition at 10-11 (emphasis added). Nothing in the Utah Court's decision purports to draw *any* such bright line ratio. In fact, that court held as follows:

> In both cases, the Supreme Court resisted the impulse to draw bright lines or create categorical classifications in fixing punitive damages awards, electing instead to adopt general standards and guideposts. *Campbell II*, 538 U.S. at 425; *Gore*, 517 U.S. at 582-83. The Supreme Court has also consistently recognized punitive damages as a means to "further a State's legitimate interests in punishing unlawful conduct

> and deterring its repetition." *Gore*, 517 U.S. at 568. Taken together, these themes create a logical underpinning to an interpretation of the Supreme Court's remand order which sanctions and expects us to exercise a considerable measure of independent judgment in fixing the punitive damages award.

Even if the Utah Supreme Court *had* adopted a rule barring all punitive damage awards exceeding a 9-to-1 ratio (which it did not), such a decision would conflict directly with this Court's admonitions in *Gore* and *Campbell*. The purported conflict between the Utah and Georgia Supreme Court decisions is a mere fabrication and cannot serve as a basis for granting a writ of *certiorari* in this case.[3]

## CONCLUSION

Defendant's contention that the Georgia Court of Appeals' opinion violates U.S. Supreme Court precedent is unfounded and without merit. Respondent respectfully

[3] Craig's argument regarding the Vermont Supreme Court's decision in *Bolsta v. Johnson*, No. 2003-004,2004 WL 444649 (Vt. March 4, 2004), is similarly meritless. *See* Def's Petition at 14-15. *Bolsta* involves an interpretation of Vermont's punitive damages statute which apparently requires intentional, malicious conduct to support an award of punitive damages. That has nothing to do with Georgia's punitive damage statute. The *Bolsta* decision did not involve nor address any constitutional issues, but merely involved an interpretation of Vermont's statute. Defendant's improper attempt to manufacture a conflict between state decisions in an effort to obtain a writ should be rejected.

submits that the Court of Appeals correctly applied controlling case law and the affirmation of the jury's verdict was proper.

Defendant's petition is based on purported erroneous evidentiary rulings of the trial court and the purported misapplication of the *Gore* and *Campbell* decisions. Such considerations are wrong and do not constitute compelling reason for granting a writ of *certiorari* in this case. *See* Supreme Court Rule 10. ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

Accordingly, respondent submits that Rodney Leroy Craig's Petition for Writ of *Certiorari* should be denied.

This 23rd day of July, 2004.

Respectfully submitted,

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